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**BEFORE THE ARIZONA CORPORATION
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JEFF HATCH-MILLER
Chairman
WILLIAM MUNDELL
Commissioner
MIKE GLEASON
Commissioner
KRISTIN MAYES
Commissioner
BARRY WONG
Commissioner

2006 AUG 30 P 4: 11

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Arizona Corporation Commission
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IN THE MATTER OF THE FORMAL
COMPLAINT AND REQUEST FOR
DECLARATORY JUDGMENT OF
PAC-WEST TELECOMM, INC.
AGAINST QWEST CORPORATION

DOCKET NO. T-03693A-05-0875
T-01051B-05-0875

**QWEST CORPORATION'S MOTION
FOR PARTIAL SUMMARY
JUDGMENT**

Pursuant to Ariz. Civ. Proc. Rule 56(a) and A.A.C. R14-3-106(k), Qwest Corporation ("Qwest") hereby files this Motion for Partial Summary Judgment ("Motion") in the above-captioned matter. Qwest moves for summary judgment on Count IV of its Counterclaims, which seeks to enjoin Pac-West Telecomm, Inc. ("Pac-West") from using Local Interconnection Service ("LIS") facilities of any kind to employ a disguised intraLATA interexchange routing scheme, known as Virtual NXX ("VNXX"). This Motion is supported by the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Factual Background

On December 6, 2005, Pac-West filed a formal complaint requesting the Arizona Corporation Commission ("Commission") to order that Qwest "true-up" its prior billings to Pac-West for services ordered over LIS facilities (alleging the bills did not properly reflect credits for Qwest's proportionate use of such facilities), and to repay Pac-West for alleged overpayments for DTT facilities ordered pursuant to its Interconnection Agreement ("ICA") with Qwest. Pac-West later amended its complaint to broaden the scope of its contractual claims under the ICA. Concurrent with its Answer, Qwest filed a

1 counterclaim ("Count IV") against Pac-West alleging violations of the ICA and state law
2 related to Pac-West's use of VNXX. Specifically, Qwest's counterclaim, stated in
3 Count IV, seeks to enjoin Pac-West from using any LIS facilities to employ VNXX, and
4 instead require Pac-West to pay applicable private line and special access charges.

5 In another matter, (Level 3 Communications, LLC, vs. Qwest Corporation; Docket
6 Nos. T-01051B-05-0415 and T-03654A-05-0415) Qwest claimed, as it claims in this
7 docket, that the Commission should order the Complainant to cease routing VNXX traffic
8 over LIS trunks. On July 28, 2006, the Commission issued Decision No. 68855 and found
9 that:

10 under the terms of the ICA, the use of LIS trunks is limited to
11 EAS/Local traffic that is specifically defined as traffic that is
12 originated and terminated within a LCA. VNXX ISP-bound
13 traffic does not originate and terminate in the same LCA.
Thus, the terms of the ICA *do not allow for the exchange of
VNXX traffic over LIS trunks.* [emphasis added]

14 Decision No. 68855 at ¶ 60. The ICA provisions that were before the Commission in
15 Decision No. 68855, and which the Commission ruled do not allow for the exchange of
16 VNXX traffic over LIS trunks, are very similar to those in the Pac-West ICA. Under
17 those like provisions in Pac-West's ICA, the use of LIS trunks is limited to EAS/Local
18 traffic, which is defined as traffic that is originated and terminated within a Local Calling
19 Area ("LCA"). For purposes of consistency with Decision No. 68855, the Commission
20 should enjoin Pac-West from using LIS facilities to employ its own VNXX scheme.

21 **II. Discussion**

22 The parties' ICA specifically delineates the types of traffic to be exchanged under
23 the ICA. With respect to the traffic and disputes at issue in this matter, there are three
24 relevant types of traffic that are appropriately exchanged under the ICA and under the
25 parties' SPOP Amendment to the ICA: (1) Exchange Access (intraLATA Toll non IXC)
26 traffic, (2) Jointly Provided Switched Access (interLATA and intraLATA IXC) traffic
27 (also known as "Meet-Point Billing" or "MPB") and (3) Exchange Service or EAS/Local
28

1 Traffic. (*See* SPOP Amendment, Attachment 1, § 1, and Section 17.1 of the ICA.)¹
2 Further, the Inter-LCA Amendment provides “The LIS InterLCA Facility may be used
3 only to transport local exchange traffic between USW and Pac-West customers located
4 within the USW local calling area.” (*See* Inter-LCA Amendment §1.7). The parties’ ICA
5 defines Extended Area Service or “EAS” to be “intraLATA traffic treated as “local”
6 traffic between exchanges (rather than as “toll” traffic) as established by the Commission
7 and as reflected in the effective U S WEST tariffs.” (*See* ICA Part A, page 5). “Local
8 Traffic” is defined to mean “intraLATA traffic within an exchange that is treated as toll
9 free traffic as established by the Commission and as reflected in the effective tariffs of US
10 WEST.” (*Id.*, p.7).

11 Qwest raises the claim in Count IV that Pac-West violates the ICA by routing
12 VNXX traffic over LIS. This allegation is supported by the evidence in this proceeding,
13 which meets the standard established in Decision No. 68855. In his Direct Testimony
14 filed on August 2, 2006, Pac-West witness Ethan Sprague fails to even address Count IV,
15 testifying instead that Counts II and III of Qwest’s counterclaims should be dismissed.
16 Sprague Direct at 15. One can conclude that Mr. Sprague too recognized the import of the
17 Commission’s Order in Decision No. 68855.

18 **III. Conclusion**

19 Under the LCA and its amendments, the use of LIS trunks is limited to EAS/Local
20 traffic, which is traffic that is originated and delivered within a single Local Calling Area.
21 The terms of the ICA do not allow for the exchange of VNXX traffic over LIS trunks.
22 Because VNXX traffic does not originate and terminate within the same LCA, Pac-West
23 must be prohibited from utilizing any LIS facilities under any scenario for purposes of
24 transporting such traffic. Qwest respectfully urges the Administrative Law Judge to grant
25 this Motion consistent with the Commission’s findings in Decision No. 68855.

26
27
28 ¹ The SPOP Amendment was filed on April 27, 2001, and approved in Order No.
63736 on June 6, 2001. Docket No. T-01051B-01-0357; T-03693A-01-0357.

1 RESPECTFULLY SUBMITTED this 30th day of August, 2006.

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7 -and-

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9 By 

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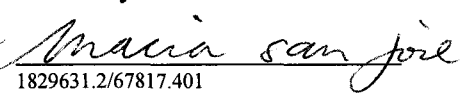
19 Docket Control
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24 this 30th day of August, 2006 to:

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